

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Geographic Partitioning and)
Spectrum Disaggregation by)
Commercial Mobile Radio)
Service Licensees)

WT Docket No. 96-148

To: The Commission

COMMENTS

Cook Inlet Region, Inc. ("CIRI"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, submits these Comments in response to the Notice of Proposed Rulemaking ("NPRM") released on July 15, 1996 in the captioned proceeding.

I. INTRODUCTION

CIRI supports the Commission's proposals to expand its geographic partitioning Rules to include all broadband personal communications services ("PCS") licenses and to permit spectrum disaggregation before the year 2000.¹ By providing prospective Transferees with the flexibility to acquire broadband PCS spectrum suited to their financial and operational resources, the Commission will allow market forces to rationalize the allocation of wireless resources. This effort should be implemented, however, in a way that fosters competition through the broad dissemination of licenses.

1. The parties to partitioning and disaggregation transactions will be referred to collectively in these Comments as "Transferors" and "Transferees."

Specifically, CIRI urges the Commission to adopt a five point program for partitioning or disaggregating C or F Block spectrum. First, the Commission must establish a rational method for allocating government financing that is secured by a transferred license interest. Second, the allocated debt should be assumed by the Transferee with the assigned license interest and should not be subject to default based on the actions of the Transferor. Third, eligibility to be a Transferee of C or F Block spectrum in the first five years of the original license term should be contingent at least on a minimal demonstration of the Transferee's credit worthiness. Fourth, the Commission should consider adjustments to installment payment terms when the Transferee offers enhanced credit to the government. Finally, the Transferee's eligibility to hold C or F Block spectrum must be determined on a current basis. With these provisions, the Commission will help to fulfill the congressional mandate to achieve a broad dissemination of licenses among a wide variety of applicants and will substantially reduce barriers to entry to the broadband PCS industry.

II. DEBT MUST BE ALLOCATED PROPORTIONALLY

First, CIRI urges the Commission to allocate debt proportionally among the parties in the case of partitioning or disaggregation of any C or F Block spectrum. In the case of a request for partitioning, this could mean assigning the outstanding balance due on a license to the Transferee in proportion to the population of the counties being partitioned.

County by county population data is easily obtained from the Bureau of the Census or from Rand McNally.² In the case of a request for disaggregation, proportional assignment of debt could be based on the amount of spectrum being transferred.

III. ASSIGNED DEBT SHOULD NOT BE SUBJECT TO EVENTS OF DEFAULT BY THE TRANSFEROR

Second, in approving the transfer of a license interest and the allocated debt, the Commission should make clear that the Transferee is not exposed to events of default through actions of the Transferor. To be certain, the Commission will help to encourage partitioning and disaggregation if it divorces the obligations of the Transferee from those of the Transferor. Executed in a three-party agreement among the United States, the Transferor, and the Transferee, assignments should release the Transferor and disengage the new licensee. This will foster clarity and certainty in the partitioning/disaggregation market and will promote the transfer of valuable spectrum where an original licensee is having difficulty servicing its government debt.

2. This "simple" approach, however, could yield unintended results. For example, if, as a result of infrastructure and operational efficiencies, urban pops are more valuable than rural pops, a license holder may attempt to "shed" the more rural pops in a BTA through partitioning. Unless a demonstration of credit worthiness is required of the Transferee by the Commission, the Commission may be left holding less valuable license fragments through default.

IV. TRANSFER SHOULD BE CONDITIONED UPON THE TRANSFEREE'S CREDIT WORTHINESS

Although CIRI supports the Commission's partitioning and disaggregation proposals, it is important to note that the government will be giving up part of its security interest by permitting splintered licenses. Not only will the government be compromising a fixed obligation, it will also be receiving an inherently less valuable security — a fragmented license — for that obligation. Default on a fragmented license may lead to loss of value for the taxpayers and to further delay in the provision of service to the public.

Indeed, in its recent D. E. and F Block Report and Order,³ the Commission raised F Block auction upfront payment and downpayment requirements in part "to guard against default"⁴ and in part to "increase the likelihood that licenses are awarded to parties who are best able to serve the public."⁵ To the extent caution was appropriate in that initial auction stage, the potential impact of the Commission's proposals here supports the exercise of an even increased level of prudence in considering prospective licensees in the partitioning/disaggregation process.

At a minimum, therefore, the Commission should require prospective Transferees to demonstrate their financial

3. Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, FCC 96-278 (rel. June 24, 1996) ("D. E. and F Block Report and Order").

4. Id. at ¶ 76.

5. Id. at ¶ 79.

qualifications for the assignment of this fixed government obligation and corresponding release of the Transferor. To measure the Transferee's credit, the Commission should consider the Transferee's credit history, its operating history (particularly as a Commission licensee), its business plan, the strength of its balance sheet, its presentation of letters of credit or third-party guarantees, or its willingness to enter into a commercial-style credit and security agreement.

V. THE COMMISSION SHOULD ENTERTAIN PROPOSALS FOR DEBT ADJUSTMENT BASED UPON ENHANCED CREDIT TERMS

In connection with its review of prospective Transferee's credit, the Commission should entertain proposals for improved terms of debt repayment where it is warranted. In implementing the congressionally-mandated auction process, the Commission heretofore has extended credit to C and F block winning bidders essentially on a blind — zero-credit worthiness — basis. This approach has placed billions of dollars of government debt in the hands of very thinly-capitalized entities. The policy behind this approach is laudable, but the government now has a portfolio of high-risk loans with fixed terms and no performance covenants short of payment default.

To the extent a prospective Transferee steps forward with substantially better credit and a willingness to provide defined terms — effectively improving the government's position — the government should consider an adjustment of the license payment terms. Rewarding good credit will encourage the alienation of license fragments while helping to enhance the government's loan

position, to limit the default risk, and to promote the realistic satisfaction of the government's asset.

The Commission has authority to provide this adjustment of terms. Section 4(i) of the Communications Act authorizes the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the] Act, as may be necessary in the execution of its functions."⁶ Further, Section 309(j) of the Act, while silent as to the treatment of auction debts, directs the Commission to "consider alternative payment schedules and methods of calculation" that promote "economic opportunity and competition" in the spectrum auction process.⁷ Finally, under Sections 1.3 and 24.819 of its Rules, the Commission on its own motion may waive the broadband PCS rules regarding installment payment terms and conditions.⁸ On this basis, the Commission should work to improve the quality of the government's assets by encouraging partitioning and disaggregation to Transferees with strong credit.

VI. ELIGIBILITY TO RECEIVE PARTITIONED OR DISAGGREGATED C OR F BLOCK SPECTRUM MUST BE DETERMINED ON A CURRENT BASIS

Finally, in implementing these provisions, the Commission should determine eligibility to receive partitioned or disaggregated C or F Block spectrum in the first five years of the original license term on a current basis. That is to say,

6. 47 U.S.C. § 154(i).

7. 47 U.S.C. § 309(j)(3)(B) & (4)(A).

8. 47 C.F.R. §§ 1.3 & 24.819.

eligibility to be a C or F Block Transferee in years one through five of the license term should be limited to entities that satisfy the entrepreneur block criteria at the time of the partition or disaggregation.⁹

In the competitive bidding Fifth Report and Order, the Commission wrote:

[I]n adopting the financial assistance measures set forth in this Report and Order, we are concerned about the possibility, even if remote, that a few bidders will win a very large number of the licenses in the entrepreneurs' blocks. As a consequence, the benefits that Congress intended for designated entities would be enjoyed, in disproportionate measure, by only a few individuals or entities. Congress, in our view, did not intend that result.¹⁰

Similarly, in the NPRM the Commission undertakes "to enable a wide variety of broadband PCS applicants . . . to overcome entry barriers through the creation of smaller, less capital-intensive licenses that are within the reach of smaller entities."¹¹

Restricting the continuing eligibility of bidders and investors that win large amounts of spectrum in the C and F Block auctions would help the Commission to achieve these goals and to limit the further concentration of license ownership.

Thus, CIRI urges the Commission not to assess eligibility to receive partitioned or disaggregated C or F Block spectrum on

9. See NPRM at ¶ 21, 38.

10. Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532, 5606 (1994) ("Fifth Report and Order"). Unfortunately, since 80 percent of the C block pops are owned by just three entities, this is what has occurred.

11. NPRM at ¶ 11.

whether the entity holds other entrepreneurs block licenses. Rather, the Commission should assess entrepreneurial status on a current basis by including the value of any licenses won in the C and F Block auctions in the total assets calculation and by measuring gross revenues for the immediately preceding three calendar years. Unless C and F Block participants are forced to "graduate" from entrepreneurial status for new, non-auction benefits, emerging companies will see fewer and fewer opportunities develop in the wireless industry.

To be certain, this policy is not inconsistent with the Commission's reasoning in the D. E. and F Block Report and Order. There, the Commission declined to treat C Block licenses as assets affecting F Block eligibility, indicating that to do so "could frustrate business plans and auction strategies based on our previous statements [linking Blocks C and F]."¹² The Commission's interest was to avoid upsetting reasonable expectations surrounding the strategic connection between Blocks C and F — an approach evidenced by the fact that the Commission specifically required other commercial mobile radio service licenses to be counted as current assets.¹³

In this case, the C and F Block auctions will be long over when partitioning and disaggregation come to the fore. Strategic goals will have been pursued and build-out will have begun. The Commission will not "frustrate business plans and auction

12. D. E. and F Block Report and Order at ¶ 26.

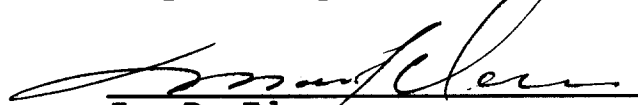
13. Id. at ¶ 27.

strategies" now by opening the "aftermarket" to emerging wireless providers. Thus, the Commission should determine eligibility to receive partitioned or disaggregated C or F Block spectrum in the first five years of the original license term on a current basis to create "licenses that are within the reach of smaller entities."

VII. CONCLUSION

For these reasons, CIRI urges the Commission to allocate government debt proportionally and without a reach back, to require a demonstration of credit worthiness to receive partitioned or disaggregated spectrum, to reward prospective Transferees with good credit, and to assess eligibility to receive partitioned or disaggregated C or F Block spectrum in the first five years of the original license term on a current basis.

Respectfully submitted,



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